

INFORMATION LETTER

Not for
Publication

NATIONAL CANNERS ASSOCIATION

For Members
Only

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Washington, D. C.

June 6, 1953

The city-wide strike of printing plant employees in the Washington, D. C., area continues, and it still is necessary, therefore, to publish the INFORMATION LETTER in this format. It is being duplicated by multilith exclusively with N.C.A. facilities.

The multilithed issues of the LETTER, beginning with that of May 23, should be considered as regular weekly issues and should be made a part of the permanent INFORMATION LETTER file.

The printing plant strike also is delaying publication of the Canned Food Pack Statistics incorporating 1952 pack figures. Copy for the fruit and vegetable pack bulletins has been prepared by the Division of Statistics, and will be published as soon as possible. As in past years, the Statistics Division will mail copies of the pack bulletins to all fruit and vegetable canners.

PROCUREMENT: Walsh-Healey Exemption

Secretary of Labor Martin P. Durkin on May 26 granted a limited exemption from the provisions of the Walsh-Healey Public Contracts Act for contracts awarded during the remainder of the calendar year 1953 for certain designated canned fruits and vegetables. The full text of the order granting the exemption, together with the press release announcing the action, was published in the INFORMATION LETTER of May 30, page 189.

As a further aid to industry understanding of the effect and application of the exemption, N.C.A. Counsel has prepared the following brief commentary. Included in this commentary is the text of a letter addressed to The Quartermaster General by William R. McComb, Administrator of the Wage and Hour and Public Contracts Division, further explaining the applicability of the exemption order.

General

The Secretary of Labor's order of May 26 does not grant an unqualified exemption to government contracts for canned foods entered into during the remainder of the calendar year 1953. In this respect, the present exemption order differs from those obtained in the years immediately pre-

ceding 1953. As a consequence, canners will find it advisable to keep Walsh-Healey considerations in mind throughout the remainder of the year and to answer for themselves in respect to each week in which any of their employees are engaged in activities relating to a government contract the question of whether the Walsh-Healey Act applies.

Walsh-Healey Act Provisions

Since there may be periods for many canners when, under the terms of the exemption order, the Walsh-Healey exemption is unavailable, canners should reacquaint themselves with the additional obligation imposed by that Act. The Walsh-Healey Act provides an entirely separate set of rules governing hours of employment, child labor, coverage, etc., from those applicable to the canning industry under the Fair Labor Standards Act, commonly called the federal wage and hour law. Principally, these include:

(1) A requirement that employees be paid time and one-half for all hours worked in excess of 40 hours per week and 8 hours per day (This differs from the Fair Labor Standards Act, which contains no minimum daily hours provision); and

(3) A prohibition on the employment of female labor under 18 years of age and male labor under 16 years of age (This differs from the Fair Labor Standards Act, which prescribes a 16-year minimum age for both male and female labor).

There are no Walsh-Healey minimum wage requirements applicable to the canning industry.

When, under the terms of the exemption order, the exemption applies, the canner (other than one within the "area of production") may treat the Walsh-Healey Act as if it did not exist for that particular week and refer exclusively to the provisions of the Fair Labor Standards Act for a determination as to what labor standards to apply. When, however, as provided for in the order, the Walsh-Healey exemption is not available for a particular week, the canner remains subject to the provisions of both labor statutes and must meet the requirements of the Walsh-Healey Act in respect to all operations in the government contract during that particular week.

When this is necessary, the canner must apply all of the old principles for determining when and in respect to what employees the labor standards of the Walsh-Healey Act must be met. A full review of the Walsh-Healey Act principles of application was published in the INFORMATION LETTER of September 20, 1947, page 339. Briefly summarized, they include:

(1) The Act applies to the canner's operations only if the canner enters into a contract with the government to supply canned foods of a value in excess of \$10,000.

(2) Canners who actually grow fruits or vegetables on their own farms are, however, statutorily exempt from the Act. This latter exemption does not apply to cooperative associations or corporations that can the produce of individual grower members.

(3) The Act also applies to the canner's operations, even though he enters into no contract with the government if he makes delivery direct to the government on a dealer's contract that exceeds \$10,000, whether the value of the goods delivered direct by the canner on such dealer's contract is in excess of \$10,000 or not.

(4) The Act applies to the canner only on operations performed subsequent to the award of the contract.

(5) When applicable, the Act applies to all employees who are actually engaged in performing work on the canned foods that are to be used in fulfilling the government contract. Where an employee during a single week performs work both on a government contract and on ordinary com-

mercial orders, the maximum hour limitations apply during the entire week, and not merely for that portion of the week during which the employee works on the government contract.

(6) The Act has no application to custodial or maintenance employees, such as watchmen, time-keepers, firemen, repair crews, etc., to office employees, or to employees who qualify for the executive, administrative, and professional exemptions under the Fair Labor Standards Act.

The Exemption Order of May 26

The above references to the requirements of the Walsh-Healey Act have been provided because many canners may find themselves unable to complete the packing, labeling, casing, and shipping of all items covered by the government contract during the limited number of weeks and during the particular weeks which may be considered exempt from the Walsh-Healey Act under the exemption order of May 26. Most canners, however, should find the number of exempt weeks sufficient to cover all or a major portion of their activities on the government contract.

The order provides that the exemption from the contract stipulations of the Walsh-Healey Act shall be available only in those weeks in which the canning of the fruits and vegetables required under the contract is exempt under either Section 7(b)(3) or Section 7(c) of the Fair Labor Standards Act. The exemption from the Walsh-Healey Act therefore is to be applied on a workweek basis controlled by the availability of the Fair Labor Standards Act exemptions to the particular commodity being packed for the government. When a canner indicates his selection of the workweek as a 7(b)(3) or 7(c) week, neither the eight-hour day maximum hours requirement nor the prohibition on the employment of female labor under 18 will apply for that particular week.

Under the order, the same principles of application must be availed of by canners operating under the "area of production" exemption. The scope of the hours exemption provided to such canners by the May 26 order is limited to that which would have prevailed if they had been operating under the 7(b)(3) and 7(c) exemptions of the Fair Labor Standards Act. In other words, "area of production" canners contracting with the government in advance of the season are restricted to 14 weeks of unlimited overtime and an additional 14 weeks in which the employer must pay time and one-half for overtime after 12 hours a day or 56 hours a week during those weeks in which government work is done. The minimum wage exemption available to "area of production" canners has not been affected.

It will therefore be necessary for canners doing business with the government who are cur-

rently operating under the "area of production" exemption to familiarize themselves with the application of the Sections 7(b)(3) and 7(c) exemptions of the Fair Labor Standards Act and to indicate their selection of the weeks in which the exemptions will apply. The same obligation will be imposed on canners who voluntarily or through union contracts have been paying time and one-half for hours worked in excess of 40 a week, both because the Walsh-Healey Act contains a maximum daily hour requirement and to enable them to employ female seasonal workers between the ages of 16 and 18. Such canners will be required to post the required pay window notice indicating their selection of the particular week as a 7(b)(3) or 7(c) week even though they are not availing themselves of their exemption privileges under the Fair Labor Standards Act.

Record Keeping Requirements

The fact that the canner has a maximum 28 weeks of exemption from the Walsh-Healey Act stipulations does not relieve him of his obligation to post the stipulations and to keep the records required by the Walsh-Healey Act.

Any canner who has a government contract subject to the Act is required to post in a prominent place in his cannery a copy of the Walsh-Healey stipulations set forth in his government contract. In addition, he is required to maintain records showing the name, address, sex, and occupation of each employee covered by the contract stipulations, and if any of these employees is under 19 years of age, the date of birth of such employee must also be shown. In addition, his records must show the hours worked and the wages paid to each employee who performed any work on the government contract. If the canner's usual and customary records contain the specified information, there is no necessity for keeping special or distinct records of any kind.

Following is the text of a letter from William R. McComb, Administrator of the Wage and Hour and Public Contracts Division, to The Quartermaster General in which he sets out in detail the official position of the Department of Labor regarding the applicability of the exemption order of May 26:

May 29, 1953

The Quartermaster General
Department of the Army
Washington 25, D. C.

Dear Sir:

This is in reference to the petition received by Secretary of Labor Durkin from the Department of Defense requesting an exemption from the pro-

visions of the Public Contracts Act for contracts awarded during the remainder of calendar year 1953 for certain canned fruits and vegetables.

Secretary Durkin has decided that the interests of the government will best be served by granting a limited exception from the provisions of the Public Contracts Act covering the procurement of those canned fruits and vegetables included in the exemption request submitted by the Department of Defense. The exception applies to contracts awarded by the Department of Defense, as well as by the Veterans Administration, during the period from May 26 to December 31, 1953, inclusive. The products included within the exception are enumerated in the enclosed copy of Secretary Durkin's order as it appeared in the Federal Register of May 26, 1953.

I wish to point out that the exception applies only during those weeks in which canning operations are exempt under Sections 7(b)(3) and 7(c) of the Fair Labor Standards Act, commonly known as the wage and hour law. Section 7(c) of the Fair Labor Standards Act provides for a complete exemption from the overtime provisions of that Act during a period of 14 weeks, and Section 7(b)(3) provides an additional 14 weeks period during which overtime need be paid for only those hours worked in excess of 12 a day or 56 a week. Employers are permitted to choose the weeks in which they wish to avail themselves of the exemptions under Sections 7(b)(3) and 7(c) and the weeks so chosen need not be consecutive. Thus, during any such week government contractors are not required to observe the labor standards prescribed in Section 1 of the Public Contracts Act, except that children under 16 years of age must not be engaged on government work.

Certain employers are located within the "area of production" and thus have available a year-round exemption from both the minimum wage and overtime provisions under the wage and hour law. These employers may also qualify under Sections 7(b)(3) and 7(c) of the wage and hour law and thus have 28 weeks of canning operations on Army or Veterans Administration contracts which will be excepted from all requirements under the Public Contracts Act except the prohibition of employment of children under 16 years of age. During 14 of such weeks, these employers have an unlimited overtime exemption. With respect to the remaining 14 weeks of the Public Contracts Act exception period, the employer must pay time and one-half for overtime after 12 hours a day or 56 a week during those weeks in which government work is done.

The Secretary's action in no way affects the minimum wage exemption which is presently available to employers in the "area of production" under the Fair Labor Standards Act.

This exception does not relieve the employer from the record-keeping requirements of the Public Contracts Act. Consequently, every employer, including those within the "area of production", must maintain the records required by Part X of Rulings and Interpretations No. 3 during those weeks in which government work is done. The employer must also, in accordance with the record-keeping requirements of the Fair Labor Standards Act, (1) note in his records the beginning and ending of each workweek during which the establishment operates under the exemption provided in Section 7(c) or Section 7(b)(3) of that Act; (2) prepare a legible printed, typewritten or handwritten (in ink) notice reading:

This establishment has taken the workweek (or workweeks) beginning.... and ending.... in this pay period as a part of the 14 workweeks permitted under Section 7(c) [or Section 7(b)(3), as the case may be] of the Fair Labor Standards Act during which overtime excess compensation, as provided in Section 7(a), is not due for overtime worked.

This week (or these weeks) in this pay period completes the.... week of the permissible 14 workweeks.

Date _____ Signed _____

and (3) on the date when employees are paid for any pay period involving a week or weeks during which the establishment operates under the 14 workweek

total overtime exemption provided in Section 7(c) or Section 7(b)(3) of the Act, the employer shall prominently post that notice beside the pay window or the person paying the employee during all the time employees are being paid. Before posting the notice the employer shall make the appropriate notations in the blank spaces in the notice.

I also wish to make it clear that all contracts in excess of \$10,000 for canned fruits and vegetables should continue to include the stipulations of the Public Contracts Act and such contracts should be reported to these Divisions on Form DD-350. These stipulations will be inoperative to the extent explained above with respect to any work performed during the aforementioned periods; however, any government work performed during other periods must be in accordance with the labor standards prescribed by the Act. An applicable attachment to the P.C. Poster (Form PC-13), informing employees of the exception, should be enclosed with the poster when that form is mailed to contractors by the contracting office.

This letter represents the official position of the Department of Labor regarding the applicability of the exception order and may be reproduced for distribution if you so desire. Copies of any of the documents referred to herein are available on request to the national or field offices of the Divisions.

Very truly yours,
/s/ Wm. R. McComb,
Administrator

PROCUREMENT: Invitations for Bids

The Quartermaster Market Center System, 1819 West Pershing Road, Chicago 9, Ill., has invited sealed bids to furnish the following:

Hamburgers—300,916 dozen 11½-oz. cans. Bids due under QM-11-009-53-153 by June 8.

The Procurement Division, Veterans Administration, Washington 25, D. C., has invited sealed bids to furnish the following:

Green Beans—1,650 dozen No. 10 cans, cut, round or flat, Grade B, or equivalent in No. 2½ or No. 2 cans, 1952 or 1953 pack. Bids due under S-399 by June 8.

Green Peas and Pea Puree—2,500 dozen No. 10 cans of sweet (or sugar) peas, size 1 to 4 inclusive or a combination thereof, Grade B, 1952 or 1953 pack; and 3,000 dozen No. 2 cans of pea puree, 1952 or 1953 pack. Bids due under S-408 by June 10.

REORGANIZATION: USDA Reorganization

The U. S. Department of Agriculture was "reorganized," effective June 4, under Reorganization Plan No. 2 of 1953.

The reorganization plan transfers to the Secretary of Agriculture the functions previously vested by law in other officers and in the agencies and employees of the USDA. As explained by Secretary Benson in testimony before Congress:

"A principal purpose of Reorganization Plan No. 2 is to enable us to make reasonable changes, from time to time, within the several agencies, including areas heretofore closed to me, by transfers of certain functions from one agency to another, by consolidation or merger of agency units where practicable, and by any other means which will promote economy, eliminate duplication, and increase efficiency. Fundamentally the plan is an authorization to the Secretary of Agriculture to make reasonable redistribution of functions of the various agencies, officers and employees of the Department to meet changing conditions so as to accomplish the foregoing objectives."

Reorganization Plan No. 2 directs the Secretary to place the administration of farm programs close to the state and local levels and to adapt the administration of USDA programs to regional, state, and local conditions.

The reorganization plan also authorizes appointment of two additional Assistant Secretaries and an Administrative Assistant Secretary, supplementing the one Assistant Secretary already provided for.

Reorganization Plan No. 2 was submitted to Congress by the President March 25. Resolutions of disapproval were rejected in the Senate by a vote of 46 to 29 and in the House by 261 to 128.

CONGRESS: Defense Production Act

The House Committee on Banking and Currency on June 3 voted unanimously to eliminate from temporary controls legislation the provision for a 90-day freeze of prices (see INFORMATION LETTER of May 30, page 192).

Such authority was contained in S. 1081, passed by the Senate. The President had requested only that with the expiration of the Defense Production Act on June 30, it be replaced with an authorization for allocations and priorities of scarce materials to defense and atomic energy contractors.

The allocations authority, if approved, thus would permit set-asides but not a general can order.

CONGRESS: Trade Agreements Act

A compromise bill for extension of the Reciprocal Trade Agreements Act was introduced in the House by Representative Simpson (Pa.) on June 2 as H.R. 5495.

The bill would extend the trade agreements program for one year, would increase the membership of the Tariff Commission from six to seven members, and would

require the Commission to report on applications for relief under the escape clause within nine months.

The President had requested a simple, one-year extension of present law, which will expire June 12.

The nine-month period is a compromise between the one year provided for by present law and the six-month period proposed in an earlier Simpson bill, H.R. 4294, which was opposed by the Administration on a number of points.

H.R. 5495 also would provide for establishment of an executive-legislative commission to study and report on U. S. foreign economic policy, as recommended by the President, during the coming year. The Senate already has approved such legislation.

Representative Simpson also introduced H.R. 5496, containing all other provisions of his earlier bill, H.R. 4294. Because the House Committee on Ways and Means already has concluded public hearings on the latter bill, it will consider H.R. 5495 and H.R. 5496 in executive session.

Speaker Martin said that efforts will be made to speed the compromise bill, H.R. 5495, through the House.

FOREIGN TRADE: Customs Drawback Procedures

The Bureau of the Customs has amended its regulations to eliminate requirements for the verification under oath of customs documents. Among the regulations from which the oath requirements are eliminated are those covering drawback procedures.

The government is protected by law against knowing and willful falsification of material facts or fraud. Therefore, without lessening the protection afforded the government, the Bureau of Customs has eliminated the oath requirements so as to simplify paper work.

The amendments are embodied in Treasury Decision 53268, text of which was published in the Federal Register of May 29, effective immediately.

STANDARDS: Corned Beef Hash

Notice is given in the Federal Register of June 3 that the Bureau of Animal Industry, USDA, is considering the issuance of a definition and standard of identity for corned beef hash.

The proposal is being made by the Secretary of Agriculture under the authority of the Meat Inspection Act. Meat products are specifically exempted from provisions of the Federal Food, Drug, and Cosmetic Act. Following is the text of the announcement:

Department of Agriculture
Bureau of Animal Industry

9 CFR Parts 17, 28

Meat Inspection Regulations
Corned Beef Hash

Notice is hereby given, in accordance with the provisions of section 4(a) of the Administrative Procedure Act (5 U.S.C. 1003(a)), that the Secretary of Agriculture, pursuant to the authority conferred upon him by the Meat Inspection Act, as amended (21 U.S.C. 71-91), and section 306 of the Tariff Act of 1930 (19 U.S.C. 1306), is considering amending the Meat Inspection Regulations (9 CFR, Chapter I, Subchapter A) as follows:

1. Subparagraph (29) of paragraph (c), §17.8, would be amended to read:

(29) Product labeled "hash" shall contain not less than 35 percent of meat computed on the weight of the cooked and trimmed meat. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the weight of the uncooked fresh meat.

2. Part 28 would be amended by adding the following section:

§28.2 Corned beef hash; identity; label statement of optional ingredients.

(a) Corned beef hash is the semi-solid meat food product in the form of a compact mass which is prepared with beef, potatoes, curing agents, and seasoning in accordance with the provisions contained in subparagraphs (1), (2), (3), and (4) of this paragraph, and any of the optional ingredients listed under paragraph (b) of this section.

(1) Either fresh beef, cured beef, or canned corned beef, or a mixture of two or more of these ingredients, may be used, and the finished product shall contain not less than 35 percent of beef computed on the weight of the cooked and trimmed beef. The weight of the cooked meat used in this calculation shall not exceed 70 percent of the weight of the uncooked fresh meat. Corned beef hash shall not be made with beef which, in the aggregate for each lot, contains more than 30 percent trimmable fat, that is, fat which can be removed by thorough, practical trimming and sorting.

(2) Potatoes refers to fresh potatoes, dehydrated potatoes, cooked dehydrated potatoes, or a mixture of two or more of these ingredients.

(3) Curing agents refers to sodium nitrate, sodium nitrite, potassium nitrate, and potassium nitrite, or a combination of two or more of these ingredients, in amounts not exceeding those specified in §18.7(k) of this subchapter.

(4) Seasoning refers to salt, sugar (sucrose or dextrose), spice, and/or flavoring, including essential oils, oleoresins, and other spice extractives.

(b) Corned beef hash may contain one or more of the following optional ingredients:

(1) Beef cheek meat and beef head meat from which the overlying glandular and connective tissues have been removed, and beef heart meat, exclusive of the heart cap, may be used individually or collectively to the extent of 5 percent of the meat ingredient.

- (2) Onions, including fresh onions, dehydrated onions, or onion powder.
- (3) Garlic, including fresh garlic, dehydrated garlic, or garlic powder.
- (4) Water.
- (5) Beef broth or beef stock.
- (6) Monosodium glutamate.
- (7) Hydrolyzed plant protein.
- (c) (1) The label shall bear the name "corned beef hash".

(2) When any ingredient specified in paragraph (b)(1) of this section is used, the label shall bear the following applicable statement: Beef cheek meat constitutes 5 percent of the meat ingredient, or beef head meat constitutes 5 percent of the meat ingredient, or beef heart meat constitutes 5 percent of the meat ingredient. When two or more of the ingredients are used the words "constitutes 5 percent of meat ingredient" need only appear once.

(3) Whenever the words "corned beef hash" are featured on the label so conspicuously as to identify the contents, the statements prescribed in subparagraph (2) of this paragraph shall immediately and conspicuously precede or follow such name without intervening written, printed, or other graphic matter.

The purpose of the foregoing amendments is to control the composition of "corned beef hash" along lines which have been thoroughly investigated by the officials who administer the Meat Inspection activities of the Department of Agriculture. The amendments which provide a definition and standard of identity for corned beef hash also permit simplified labeling which will allow the industry to omit ingredient labeling for this class of product.

Any person who wishes to submit written data, views, or arguments concerning the proposed amendments may do so by filing them with the Chief, Meat Inspection, Bureau of Animal Industry, Agricultural Research Administration, United States Department of Agriculture, Washington 25, D. C., within 15 days after the date of publication of this notice in the Federal Register.

Done at Washington, D. C., this 28th day of May 1953.

TRUE D. MORSE,
Acting Secretary of Agriculture.

STANDARDS: Grades for Canned Berries

The Production and Marketing Administration, USDA, has revised U. S. standards for grades of canned blackberries and other similar berries such as boysenberries, dewberries, and loganberries. Text of the revised standards was published in the Federal Register of May 29.

STANDARDS: Grades for Tomato Sauce

Notice is given in the Federal Register of May 29 that the Production and Marketing Administration, USDA, proposes to issue U. S. standards for grades of tomato sauce. The text of the proposed standards was published as part of the notice.

STANDARDS: Grades for Chili Sauce

Notice is given in the Federal Register of May 9 that the Production and Marketing Administration, USDA, proposes to issue U. S. standards for grades of chili sauce. The text of the proposed standards was published as part of the notice.

DEATH: Aulsey O. Stephens

Aulsey O. Stephens, husband of Eulalia J. Stephens, vice president, and father of Alvin O. Stephens, president of Havana Canning Company, Havana, Fla., died May 26 following a brief illness.

Although he had been inactive in the business since 1927, due to a physical handicap, Mr. Stephens' sense of dry humor and his indomitable spirit made him a source of inspiration to all who knew him.

STATISTICS: 1952 Pack of Pimientos

The 1952 pack of pimientos totaled 653,322 actual cases, as compared with 672,055 cases packed in 1951, according to a report by the N.C.A. Division of Statistics.

The pack in Georgia increased from 468,240 cases in 1951 to 485,259 cases last year. Packs of pimientos were reported for 1952 in Mississippi, in addition to California, Alabama, Tennessee, and Texas, which had packed pimientos in previous years.

STATISTICS: 1952 Pack of Okra

The 1952 pack of okra totaled 765,800 actual cases, as compared with 904,045 cases packed in 1951, according to a report by the N.C.A. Division of Statistics.

Style of Pack	1951 (actual cases)	1952
Whole okra	42,417	48,751
Cut okra	430,530	372,579
Okra and tomatoes.	431,098	344,470
U. S. Total.	904,045	765,800

PERSONNEL: Randolph Crossley Retires

Randolph Crossley retired as president of Hawaiian Fruit Packers, Ltd., on June 1 to devote full time to other interests. Dorsey W. Edwards, general manager, succeeded Mr. Crossley as president. Mr. Crossley will serve as a director.

LABORATORY: Further Report on Waste Treatment

Supplementing two earlier special reports on experimental treatment of cannery waste, the N.C.A. Washington Research Laboratory has now issued its Research Report No. 4-53 entitled "Treatment of Cannery Wastes by Aeration: III--1952 Pilot Plant Studies of Apple Wastes."

The report points out that on an experimental scale very satisfactory purification of apple waste was achieved by aeration, but determining the economic practicality of the method will require further study.

Copies will be furnished to those interested in this topic on request to the Association's Washington Research Laboratory.

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